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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Catholic Family and Human Rights Institute, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Family and Human Rights

1. C-Fam welcomes this opportunity to comment on the High Commissioner's report mandated by Resolution 29/22 of the Human Rights Council on 3 July 2015. We welcome the focus of the Human Rights Council on the family and human rights and look forward to continued engagement on this issue.

2. The family in the Universal Declaration of Human Rights and the binding treaties it has given rise to can only be understood as the union of a man and a woman in marriage and their offspring. Relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family are not entitled to the specific protection reserved for the family in international law and policy.

3. The Universal Declaration of Human Rights recognizes the family as "the natural and fundamental group unit of society" and declares that it is "entitled to protection by society and the State" (UDHR16). It recognizes the formation of a family as resulting from the union of a man and a woman who freely exercise their right to marry and found a family, and sanctions the equal rights of men and women in marriage (UDHR 16).

4. A good faith interpretation of binding international human rights instruments that further entrench these norms can only conclude that the family in international law is founded upon the union of a man and a woman in marriage. The International Covenant on Civil and Political Rights (Article 23) and the International Covenant on Economic, Social, and Cultural Rights (Article 10) reflect the UDHR verbatim. The Convention on the Elimination of all Forms of Discrimination Against Women goes further and speaks of "husband" and "wife" when referring to the equal rights of men and women in the family (Article 16).

5. The ordinary meaning of the words in these binding legal provisions excludes relations between individuals of the same sex and other social and legal arrangements that are not analogous to the family as capable of constituting a family for purposes of international law and policy. This deliberate effort of the framers of international human rights instruments to elevate the family with respect to other social and legal arrangements that are not analogous to the family becomes urgently evident in the context of the rights of the child.

6. The Preamble of the Convention on the Rights of the Child, in light of which the entire convention should be understood, also echoes the Universal Declaration of Human Rights and recognizes how the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community." The same convention includes a fundamental right of the child to know and be cared for by his/her parents which lies at the heart of concrete obligations of state parties to the treaty having to do with family reunification, adoption, cultural and religious identity, and other related provisions (see for example Articles 2, 3, 5, 7, 8, 9, 10, 18, 27).

7. International law requires the protection of children regardless of their situation in life but it does not require states to confer special benefits on relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family. The Universal Declaration of Human Rights and binding international human rights treaties recognize that many children are deprived of their family and must be provided with adequate protection (Article 25). It does not require states to equate the family to any social and legal arrangement where children may be found.

8. This norm is enshrined in binding international human rights instruments, including the International Covenant on Civil and Political Rights (Article 24), the International Covenant on Economic, Social, and Cultural Rights (Article 10), and the Convention on the Rights of the Child (Articles 2, 7, 8, 20), and can only be read to underscore further the obligation of member states to distinguish between the family as the optimal environment for children and other social and legal arrangements that are not analogous to the family.

9. By virtue of these provisions, and many others in binding international human rights instruments, the family is defined in international law; it possesses adequate international legal personality and is a proper subject of human rights.

10. To treat relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as equivalent to the family is a violation of the fundamental human right of children to know and be cared for by their mother and father, and may even jeopardize their health and wellbeing, since social science abundantly shows that children do best when they are brought up by their biological mother and father. Details about the social science on this topic can be obtained from our submission to the secretariat in preparation of their report available on the website of the Office of the High Commissioner for Human Rights.

11. Sadly, the Office of the High Commissioner for Human Rights has grossly misstated the obligations of member states under international law in this report (A/HRC/31/37) and has overlooked other fundamental human rights in both the civil and political, as well as the economic, social and cultural spheres, and particularly the rights of children, who are the most vulnerable among us and deserving of special protection. We believe the secretariat should review the report on protection of the family in light of the above considerations.

12. In the report (Paragraph 24) the secretariat asserts "There is no definition of the family under international human rights law," and that it should be understood in a "wide sense." The secretariat also equates the nuclear family with "the extended family, and other traditional and modern community-based arrangements" when it comes to caring for children and binding international obligations in this respect (Paragraph 25).

13. Moreover, the secretariat cites examples of countries extending protections reserved for the family to relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as examples of changes in family law and policy, as if it were a matter of course that international law and policy should account for such changes (Paragraph 51-75).

14. This has no basis in either international law or the international political consensus of member states. The General Assembly recently reiterated that there is a distinction in international law and policy between "the family" and other social and legal arrangements that can constitute a "household" according to different national circumstances in Target 5.4 of the Sustainable Development Goals agreed in the summit outcome document "Transforming Our World: The 2030 Agenda for Development."

15. The present report and other recent acts and declarations by the UN secretariat, agencies, treaty bodies, and other UN mandate holders, treating relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as equivalent to the family are ultra vires and cannot give rise to binding legal obligations on sovereign states. They are not based on valid interpretations of international law and policy, and cannot contribute to the formation of new customary international law.

16. United Nations resolutions should continue to reflect the definition of the family in existing international law, as Resolution 29/22 has done, and may never use language that implicitly or explicitly attempts to modify this definition. Any mention of the family in UN resolutions can only be interpreted in reference to a man and a woman united in marriage and their natural offspring. Any attempt to modify the definition of the family in international law and policy is incompatible with the fundamental human rights enshrined in the Universal Declaration of Human Rights and human rights treaties, and constitutes a violation of those rights.